

EXHIBIT 9

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CORNELL HOLDEN and MIGUEL)
MEJIA on behalf of)
themselves and all others)
similarly situated,)
Plaintiffs,)

vs.) No.

THE PORT AUTHORITY OF NEW)
YORK AND NEW JERSEY, et)
al.,)
Defendants.)

-----)

October 1, 2018

10:30 a.m.

Deposition of JOHN F. FITZPATRICK, held
at the offices of Winston & Strawn LLP, 200
Park Avenue, New York, New York, before
Laurie A. Collins, a Registered Professional
Reporter and Notary Public of the State of New
York.

<p style="text-align: right;">Page 2</p> <p>1</p> <p>2 A P P E A R A N C E S:</p> <p>3</p> <p>4 WINSTON & STRAWN LLP</p> <p>5 Attorneys for Plaintiffs</p> <p>6 200 Park Avenue</p> <p>7 New York, New York 10166-4193</p> <p>8 BY: ROSS M. KRAMER, ESQ.</p> <p>9 rkramer@winston.com</p> <p>10 EMILY C. ELLIS, ESQ.</p> <p>11 eellis@winston.com</p> <p>12 - and -</p> <p>13 THE LEGAL AID SOCIETY</p> <p>14 199 Water Street</p> <p>15 New York, New York 10038</p> <p>16 BY: CYNTHIA CONTI-COOK, ESQ.</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1</p> <p>2 S T I P U L A T I O N S</p> <p>3 IT IS HEREBY STIPULATED AND AGREED, by and</p> <p>4 among counsel for the respective parties hereto,</p> <p>5 that the filing, sealing, and certification of the</p> <p>6 within deposition shall be and the same are hereby</p> <p>7 waived;</p> <p>8 IT IS FURTHER STIPULATED AND AGREED that all</p> <p>9 objections, except as to form of the question,</p> <p>10 shall be reserved to the time of the trial;</p> <p>11 IT IS FURTHER STIPULATED AND AGREED that the</p> <p>12 within deposition may be signed before any Notary</p> <p>13 Public with the same force and effect as if signed</p> <p>14 and sworn to before the Court.</p> <p>15</p> <p>16 * * *</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 3</p> <p>1</p> <p>2 A P P E A R A N C E S (continued):</p> <p>3</p> <p>4 THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY</p> <p>5 Attorneys for Defendants</p> <p>6 150 Greenwich Street, 24th Floor</p> <p>7 New York, New York 10006</p> <p>8 BY: THOMAS R. BROPHY, ESQ.</p> <p>9</p> <p>10 ALSO PRESENT:</p> <p>11 BENJAMIN RUTKIN-BECKER (Legal Aid Society)</p> <p>12 DEVERELL WRITE, Videographer</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 5</p> <p>1</p> <p>2 THE VIDEOGRAPHER: We are going on the</p> <p>3 record at 10:30 a.m. on October 1st, 2018.</p> <p>4 Please note the microphones are</p> <p>5 sensitive and may pick up whispering and</p> <p>6 private conversation.</p> <p>7 Please place all cell phones away from</p> <p>8 the microphones, as they can interfere with</p> <p>9 the deposition audio.</p> <p>10 Audio and video recording will continue</p> <p>11 to take place unless all parties agree to go</p> <p>12 off the record.</p> <p>13 This is Media Unit 1 of the</p> <p>14 video-recorded deposition of John F.</p> <p>15 Fitzpatrick taken by counsel for the plaintiff</p> <p>16 in the matter of Cornell Holden, et al.,</p> <p>17 versus The Port Authority of New York and New</p> <p>18 Jersey, et al. This case is filed in the</p> <p>19 United States District Court for the Southern</p> <p>20 District of New York. We're here at the</p> <p>21 offices of Winston & Strawn, located at 200</p> <p>22 Park Avenue, New York, New York.</p> <p>23 My name is Deverell Write, representing</p> <p>24 Veritext Legal Solutions. The court reporter</p> <p>25 is Laurie Collins from Veritext Legal</p>

<p style="text-align: right;">Page 58</p> <p>1 Fitzpatrick</p> <p>2 officer?</p> <p>3 A. You're capturing the crime stat because</p> <p>4 of a pickup arrest by the police officer. He sees</p> <p>5 the bag snatch, he sees the person lighting a</p> <p>6 crack pipe, he sees the sale of K2 on the steps of</p> <p>7 42nd Street. It is an observation arrest. Nobody</p> <p>8 reported it. He saw it and took action.</p> <p>9 So I couldn't give you a percentage,</p> <p>10 but a good percentage of the crimes that we</p> <p>11 capture at the bus terminal were because of the</p> <p>12 police work that was being done.</p> <p>13 Q. Would you keep track of the crimes that</p> <p>14 were most frequently reported in whatever manner</p> <p>15 at the bus terminal?</p> <p>16 MR. BROPHY: Note my objection.</p> <p>17 You can answer.</p> <p>18 A. They had no way of capturing those</p> <p>19 stats when I got there. They were working on a</p> <p>20 system when I was leaving that was going to</p> <p>21 perform that function.</p> <p>22 Q. So did any of your Excel spreadsheets</p> <p>23 show what the most frequent crimes were at the bus</p> <p>24 terminal?</p> <p>25 A. In regard to arrests made, they would.</p>	<p style="text-align: right;">Page 60</p> <p>1 Fitzpatrick</p> <p>2 Q. When you say you're sure it was, did</p> <p>3 you learn from someone at The Port Authority that</p> <p>4 that was a common occurrence?</p> <p>5 A. No.</p> <p>6 Q. When you came over, were you briefed by</p> <p>7 someone on what the most common issues were with</p> <p>8 regard to law enforcement at the bus terminal?</p> <p>9 A. I would say no. I was briefed in many</p> <p>10 regards as to many things that exist at the bus</p> <p>11 terminal but more so relationships and duties an</p> <p>12 responsibilities with the bus carriers and the</p> <p>13 civilian side of the bus terminal. That came</p> <p>14 pretty quickly, pretty easily.</p> <p>15 I turned my attentions to -- and there</p> <p>16 was some introduction to the crime that we saw,</p> <p>17 but it wasn't anything I didn't expect. It was</p> <p>18 very similar to Penn Station.</p> <p>19 Q. So I think you had said earlier that</p> <p>20 public lewdness in the men's restrooms was a</p> <p>21 common condition when you worked with the MTA; is</p> <p>22 that right?</p> <p>23 A. You know, I don't know how we can</p> <p>24 define the word "common." But did it occur? Yes.</p> <p>25 Q. Did there come a time after you joined</p>
<p style="text-align: right;">Page 59</p> <p>1 Fitzpatrick</p> <p>2 And I'm thinking back now, and I'm sure there</p> <p>3 were -- one -- I'll give you an example. One</p> <p>4 spreadsheet was per arrest. So for every arrest</p> <p>5 that was made: name, date of birth, crime</p> <p>6 committed, and on. From that I could come up with</p> <p>7 the spreadsheets that show, well, we had 350</p> <p>8 arrests for whatever crime. You get the idea.</p> <p>9 I'm trying to remember if I had a</p> <p>10 spreadsheet that had crimes with an unnamed</p> <p>11 suspect, you know.</p> <p>12 Q. What do you mean?</p> <p>13 A. In other words, a report of a crime</p> <p>14 where the suspect wasn't in custody and it was</p> <p>15 just...</p> <p>16 Q. When you came over to The Port</p> <p>17 Authority, was public lewdness a major problem at</p> <p>18 the bus terminal?</p> <p>19 A. A major problem? I mean...</p> <p>20 Q. Was it a problem at the bus terminal?</p> <p>21 A. Again, not to sound -- every crime is a</p> <p>22 problem. But a major problem?</p> <p>23 Q. Was it a common occurrence at the bus</p> <p>24 terminal?</p> <p>25 A. I'm sure it was.</p>	<p style="text-align: right;">Page 61</p> <p>1 Fitzpatrick</p> <p>2 The Port Authority that you learned that that was</p> <p>3 occurring in The Port Authority Bus Terminal men's</p> <p>4 restrooms?</p> <p>5 A. Yes.</p> <p>6 Q. And how did you learn that?</p> <p>7 A. There were arrests made for the</p> <p>8 offenses, yeah.</p> <p>9 Q. Did you consider that a quality-of-life</p> <p>10 crime?</p> <p>11 A. It's not listed as a quality-of-life</p> <p>12 crime. Is it -- yeah, I did not consider it a</p> <p>13 quality-of-life crime.</p> <p>14 Q. What steps did you take to combat</p> <p>15 public lewdness at The Port Authority Bus</p> <p>16 Terminal?</p> <p>17 MR. BROPHY: Note my objection.</p> <p>18 You can answer.</p> <p>19 A. Well, the direct answer to that</p> <p>20 question would be none.</p> <p>21 Q. Why would that be none?</p> <p>22 A. The expansive answer would be --</p> <p>23 Q. Yeah, please.</p> <p>24 A. -- no more or no less than I would take</p> <p>25 for every other crime at the bus terminal.</p>

<p style="text-align: right;">Page 62</p> <p>1 Fitzpatrick</p> <p>2 Q. Well, as the captain you told us that</p> <p>3 one of the things that you addressed were crime</p> <p>4 stats and reduction.</p> <p>5 A. Right.</p> <p>6 Q. Did you target a reduction in the crime</p> <p>7 stats for public lewdness?</p> <p>8 A. I targeted crime reduction for any</p> <p>9 crime stat.</p> <p>10 Q. Okay. So let's focus on the crime</p> <p>11 stats for public lewdness. What directions did</p> <p>12 you give to combat that in particular?</p> <p>13 A. Okay. We had plainclothes police</p> <p>14 officers on patrol in the bus terminal, as you</p> <p>15 know, I'm sure. We had conditions teams that I</p> <p>16 had started that initiative as well to combat just</p> <p>17 what we spoke of before: quality-of-life offenses</p> <p>18 inside and surrounding the bus terminal.</p> <p>19 Q. What are -- I didn't mean to interrupt</p> <p>20 you. Go ahead.</p> <p>21 A. That's pretty much it, actually.</p> <p>22 Q. What are conditions teams?</p> <p>23 A. A supervisor -- between three and five</p> <p>24 police officers that wouldn't be post driven.</p> <p>25 They would have the freedom to roam around and</p>	<p style="text-align: right;">Page 64</p> <p>1 Fitzpatrick</p> <p>2 neither one of those entities were put into effect</p> <p>3 to combat public lewdness alone. They were to</p> <p>4 reduce crime within The Port Authority Bus</p> <p>5 Terminal in general.</p> <p>6 If they went to the bathroom and they</p> <p>7 saw people smoking marijuana, snorting cocaine,</p> <p>8 using a hypodermic needle, sharing a hypodermic</p> <p>9 needle, engaging in public lewd, washing</p> <p>10 themselves in the sink -- I could go on all day,</p> <p>11 but they were supposed to take some action.</p> <p>12 Q. So those were uniformed officers. You</p> <p>13 said that there were also plainclothes police</p> <p>14 officers that were part of the way you were</p> <p>15 combating public lewdness; is that right?</p> <p>16 A. No.</p> <p>17 Q. What were the plainclothes officers</p> <p>18 used for?</p> <p>19 A. They also were to address crime in</p> <p>20 general within The Port Authority Bus Terminal.</p> <p>21 Q. Was one of the things that the</p> <p>22 plainclothes officers did to patrol the restrooms?</p> <p>23 A. Yes.</p> <p>24 Q. And what were they looking for in the</p> <p>25 restrooms?</p>
<p style="text-align: right;">Page 63</p> <p>1 Fitzpatrick</p> <p>2 look for offenses anywhere from open alcohol</p> <p>3 container within the bus terminal, urinating,</p> <p>4 smoking marijuana, that type of stuff.</p> <p>5 Q. Would public lewdness or exposure in</p> <p>6 the restrooms be one of the conditions that they</p> <p>7 were looking for?</p> <p>8 A. Absolutely.</p> <p>9 Q. Absolutely?</p> <p>10 A. Specifically or -- no, not</p> <p>11 specifically.</p> <p>12 Q. So --</p> <p>13 A. Their instruction was to comb the bus</p> <p>14 terminal in its entirety and any violation of law</p> <p>15 that they were duty bound to take action and make</p> <p>16 arrest they would do so.</p> <p>17 Q. And these were plainclothes officers?</p> <p>18 A. The conditions teams were uniformed</p> <p>19 officers.</p> <p>20 Q. So when I asked you what you put in</p> <p>21 place to combat public lewdness, you mentioned</p> <p>22 plainclothes officers and conditions teams. So</p> <p>23 how did the conditions teams combat public</p> <p>24 lewdness?</p> <p>25 A. Neither one of those teams or --</p>	<p style="text-align: right;">Page 65</p> <p>1 Fitzpatrick</p> <p>2 A. Any violation of law they could</p> <p>3 observe.</p> <p>4 Q. Was it your idea to institute</p> <p>5 plainclothes patrols or was there already</p> <p>6 happening when you joined The Port Authority?</p> <p>7 A. It wasn't happening. Supposedly it had</p> <p>8 been in the past. I did not see conditions teams.</p> <p>9 I did not see plainclothes teams. I didn't see</p> <p>10 anything but cop-in-a-box type of policing.</p> <p>11 Q. So did the decision to institute</p> <p>12 conditions teams and plainclothes patrolling come</p> <p>13 from you or from someone above you at The Port</p> <p>14 Authority?</p> <p>15 A. It came from me. I would have had to</p> <p>16 have cleared it, I'm sure. The Port Authority,</p> <p>17 again, is a unique animal. Every time you try to</p> <p>18 effect change, you're facing a union and -- but I</p> <p>19 would have had to have cleared several hurdles to</p> <p>20 get them cleared.</p> <p>21 Q. Were those conditions teams and</p> <p>22 plainclothes patrolling something that you brought</p> <p>23 over with you from your time with the MTA?</p> <p>24 A. Yes.</p> <p>25 Q. Were you the person who instituted</p>

<p style="text-align: right;">Page 70</p> <p>1 Fitzpatrick</p> <p>2 some sort of incident or emergency-type situation</p> <p>3 for them to go. They would have to receive a call</p> <p>4 to go in. They wouldn't as a matter of rule go in</p> <p>5 and search the restroom.</p> <p>6 Q. So male plainclothes officers wouldn't</p> <p>7 enter female restrooms; and family plainclothes</p> <p>8 officers would not enter the men's restrooms?</p> <p>9 A. Correct.</p> <p>10 Q. Was that something --</p> <p>11 A. Well, they shouldn't.</p> <p>12 Q. Was that a specific instruction that</p> <p>13 they were given?</p> <p>14 A. I don't recall.</p> <p>15 MR. BROPHY: Note my objection.</p> <p>16 You can answer.</p> <p>17 Q. Were plainclothes officers instructed</p> <p>18 not to interact with the public in the restrooms?</p> <p>19 MR. BROPHY: Note my objection.</p> <p>20 You can answer.</p> <p>21 A. Were they instructed not to interact?</p> <p>22 Q. Either to interact or not to interact?</p> <p>23 Was there any instruction given about how they</p> <p>24 should deal with the public in the men's</p> <p>25 restrooms?</p>	<p style="text-align: right;">Page 72</p> <p>1 Fitzpatrick</p> <p>2 So if they walk into a bathroom and</p> <p>3 they see an arrest -- I mean see a crime in</p> <p>4 progress, I would expect them to make the arrest,</p> <p>5 but they didn't have to be told that.</p> <p>6 Q. Would you expect them to walk into a</p> <p>7 restroom and approach the urinals as part of their</p> <p>8 plainclothes patrol?</p> <p>9 MR. BROPHY: Objection.</p> <p>10 Go ahead.</p> <p>11 A. I wouldn't see why they would or</p> <p>12 shouldn't.</p> <p>13 Q. I will show you -- do we have copies of</p> <p>14 Holden starting at PA 1?</p> <p>15 I'd like to show you an exhibit that</p> <p>16 I'd like to mark as defendants' -- Plaintiffs'</p> <p>17 Exhibit 1, please.</p> <p>18 (Discussion off the record.)</p> <p>19 (Fitzpatrick Exhibit 1, arrest</p> <p>20 paperwork for Holden, Bates-stamped PA 1 to</p> <p>21 49, marked for identification.)</p> <p>22 Q. Do you recognize this document?</p> <p>23 MR. BROPHY: Counsel, for the record,</p> <p>24 this is Bates-stamped PA 1 to 49</p> <p>25 consecutively; is that correct?</p>
<p style="text-align: right;">Page 71</p> <p>1 Fitzpatrick</p> <p>2 MR. BROPHY: Note my objection.</p> <p>3 You can answer.</p> <p>4 A. No.</p> <p>5 Q. Were there any techniques for</p> <p>6 patrolling in plainclothes in the restrooms that</p> <p>7 were given to those plainclothes officers?</p> <p>8 MR. BROPHY: Note my objection.</p> <p>9 You can answer.</p> <p>10 A. Not that I can recall.</p> <p>11 Q. Were there certain conditions that</p> <p>12 those officers were instructed to look for in the</p> <p>13 restrooms?</p> <p>14 MR. BROPHY: Note my objection.</p> <p>15 You can answer.</p> <p>16 A. Crimes? Other than crimes?</p> <p>17 Q. Well, any particular crimes they were</p> <p>18 instructed to look for in the restrooms?</p> <p>19 MR. BROPHY: Objection.</p> <p>20 A. No. They walk into -- they were</p> <p>21 instructed to make an arrest for any and all</p> <p>22 crimes that present themselves. If you have</p> <p>23 probable cause to making a crime -- I'm sorry, you</p> <p>24 have probable cause to make an arrest for a crime,</p> <p>25 you're duty bound to make the arrest on the spot.</p>	<p style="text-align: right;">Page 73</p> <p>1 Fitzpatrick</p> <p>2 MR. KRAMER: Yes.</p> <p>3 MR. BROPHY: Thank you. And there are</p> <p>4 certain portions of it blocked out as well.</p> <p>5 MR. KRAMER: Yes.</p> <p>6 MR. BROPHY: Thank you.</p> <p>7 Q. So, Mr. Fitzpatrick, do you recognize</p> <p>8 what this is?</p> <p>9 A. Yes.</p> <p>10 Q. What do you recognize it to be?</p> <p>11 A. It appears to be arrest paperwork -- it</p> <p>12 doesn't appear to be; it is arrest paperwork.</p> <p>13 Q. And is it arrest paperwork for an</p> <p>14 arrest made, if you look at 03, by Police Officer</p> <p>15 Michael J. Opromalla?</p> <p>16 A. Yes.</p> <p>17 Q. And the date of the arrest would be May</p> <p>18 12th, 2014?</p> <p>19 A. Yes.</p> <p>20 Q. And if you look at page 05, does it</p> <p>21 appear that the person arrested was named Cornell</p> <p>22 Holden?</p> <p>23 A. It does.</p> <p>24 Q. And do you see on page 5 where it has</p> <p>25 the section titled the factual basis for these</p>

<p style="text-align: right;">Page 102</p> <p>1 Fitzpatrick</p> <p>2 Q. During the time that you worked at The</p> <p>3 Port Authority Police Department, do you remember</p> <p>4 any other articles coming out that were critical</p> <p>5 of The Port Authority Police Department's policing</p> <p>6 techniques?</p> <p>7 A. Sitting here now, no. If there were, I</p> <p>8 just don't remember. I do -- I remember this</p> <p>9 after you put it in front of me, but I don't</p> <p>10 remember any others right now.</p> <p>11 Q. So it's fair to say, isn't it, that</p> <p>12 this made an impression on you when it came out</p> <p>13 and this is something that you wanted to deal</p> <p>14 with?</p> <p>15 MR. BROPHY: You can answer.</p> <p>16 Objection.</p> <p>17 A. I just wanted -- the statement that was</p> <p>18 made or --</p> <p>19 Q. This article. When this article was</p> <p>20 published, that this was significant to you?</p> <p>21 A. I will answer it this way: Any time I</p> <p>22 even think that someone might have been</p> <p>23 arrested -- and believe me, I know -- for</p> <p>24 something they didn't do, it's -- yeah, it's a</p> <p>25 cause of concern for me.</p>	<p style="text-align: right;">Page 104</p> <p>1 Fitzpatrick</p> <p>2 A. I just don't remember. I'm not saying</p> <p>3 it didn't happen. I just don't remember the</p> <p>4 conversation.</p> <p>5 Q. Do you know an officer named Officer</p> <p>6 Kehoe?</p> <p>7 A. Yes.</p> <p>8 Q. Would it refresh your recollection that</p> <p>9 you may have spoken to Officer Opromalla and</p> <p>10 Officer Kehoe after this article was published?</p> <p>11 A. It would not refresh my memory any more</p> <p>12 than -- although Kehoe is a delegate, so that</p> <p>13 makes sense.</p> <p>14 Q. And by "delegate" what do you mean?</p> <p>15 A. He's a Police Benevolent Association</p> <p>16 representative at the command. So he would sit in</p> <p>17 on a meeting with any type of supervision.</p> <p>18 Q. Do you remember Officer Kehoe raising</p> <p>19 the issue that he had safety concerns for Officer</p> <p>20 Opromalla following the publication of this</p> <p>21 article?</p> <p>22 A. Safety concerns. Regarding?</p> <p>23 Q. Because Officer Opromalla was</p> <p>24 personally named in this article.</p> <p>25 A. I remember -- I don't remember talking</p>
<p style="text-align: right;">Page 103</p> <p>1 Fitzpatrick</p> <p>2 Q. Does that refresh your recollection</p> <p>3 that you may have had a meeting with one of your</p> <p>4 superiors after you read this article?</p> <p>5 A. I may have, but, again, I don't</p> <p>6 remember if I did or who it was with.</p> <p>7 Q. Do you remember meeting with Officer</p> <p>8 Opromalla after this article was published?</p> <p>9 A. I met with Officer Opromalla. I</p> <p>10 couldn't tell you if it was before or after this</p> <p>11 or -- I just -- again, you know, I had a lot of</p> <p>12 people under my command and a lot of meetings.</p> <p>13 But I have definitely spoken to Michael, because</p> <p>14 he was in plainclothes a lot.</p> <p>15 Q. Do you remember talking to him about</p> <p>16 this article?</p> <p>17 A. I really don't specifically. I very</p> <p>18 well may have. I just don't remember if I did.</p> <p>19 Q. Do you remember having a conversation</p> <p>20 with Officer Opromalla about the statement in here</p> <p>21 that he was being referred to as the gay</p> <p>22 whisperer?</p> <p>23 A. Personally between myself and the</p> <p>24 police officer?</p> <p>25 Q. Uh-huh.</p>	<p style="text-align: right;">Page 105</p> <p>1 Fitzpatrick</p> <p>2 to Officer Opromalla. I do remember that it was</p> <p>3 suggested maybe to take Opromalla out of</p> <p>4 plainclothes. That could be. I'm not sure if it</p> <p>5 was because of this or because he was named. It</p> <p>6 would make sense.</p> <p>7 Q. What other reason could it have been?</p> <p>8 A. I don't know. Like I said, it just</p> <p>9 makes sense.</p> <p>10 Q. Do you remember now making the decision</p> <p>11 to take him out of plainclothes?</p> <p>12 A. If he was taken out of plainclothes, it</p> <p>13 would have been my decision to make. Actually,</p> <p>14 strike that.</p> <p>15 It would have been the sergeant at roll</p> <p>16 call's decision to make or the tour commander's</p> <p>17 decision to make. But if they ran that past me,</p> <p>18 that's nothing I would have objected to one way or</p> <p>19 the other.</p> <p>20 Q. You understand this article to be</p> <p>21 alleging misconduct on behalf of The Port</p> <p>22 Authority Police Department. Is that fair to say?</p> <p>23 A. Yes.</p> <p>24 Q. What did you do in response to that</p> <p>25 allegation of misconduct?</p>

<p style="text-align: right;">Page 106</p> <p>1 Fitzpatrick</p> <p>2 A. Now, if you -- if I were to tell you I</p> <p>3 gathered all of my supervisors into a room and say</p> <p>4 we have to make sure we have our Is crossed -- Ts</p> <p>5 crossed, Is dotted, that would be reasonable. If</p> <p>6 you're asking me do I remember for sure it</p> <p>7 happened, that would be a lie.</p> <p>8 Q. As a captain of The Port Authority</p> <p>9 Police Department, you took allegations of</p> <p>10 misconduct seriously; right?</p> <p>11 A. I did.</p> <p>12 Q. And this was a very public allegation</p> <p>13 of misconduct by The Port Authority Police</p> <p>14 Department; right?</p> <p>15 A. Yes.</p> <p>16 Q. So searching your memory, what actions</p> <p>17 did you take following this serious public</p> <p>18 allegation of misconduct?</p> <p>19 MR. BROPHY: Note my objection.</p> <p>20 You can answer.</p> <p>21 A. I would -- look, you're asking me again</p> <p>22 do I remember specifically. What I would normally</p> <p>23 do is address roll calls about what I had said</p> <p>24 before, where I would give some sort of -- not so</p> <p>25 much teaching, but I would address roll calls</p>	<p style="text-align: right;">Page 108</p> <p>1 Fitzpatrick</p> <p>2 A. Probably -- I say this quite a bit:</p> <p>3 Remember, whether you're in plainclothes or</p> <p>4 uniform, you're in the limelight, people watch</p> <p>5 what you do. Make sure you -- again, I always get</p> <p>6 that wrong too, Is dotted, Ts crossed, all that.</p> <p>7 But it's always safety, make sure you're doing</p> <p>8 your job right, the public's watching.</p> <p>9 I certainly didn't believe that my</p> <p>10 officers did anything wrong here. As I'm sitting</p> <p>11 here, I still -- I've been out for a while. Until</p> <p>12 you show me differently.</p> <p>13 You know, I always tell people, you</p> <p>14 know, nobody is really happy when they get</p> <p>15 arrested. That doesn't mean that people aren't</p> <p>16 arrested unjustly.</p> <p>17 But when I read a report, arrest</p> <p>18 report -- and you asked me earlier do I read</p> <p>19 arrest reports. I read them all. And I send them</p> <p>20 back if I find the grammar is terrible or whatever</p> <p>21 the case is.</p> <p>22 If I'm dissatisfied about probable</p> <p>23 cause for an arrest, I would remember it. I just</p> <p>24 don't remember this.</p> <p>25 Q. Do you remember after this article came</p>
<p style="text-align: right;">Page 107</p> <p>1 Fitzpatrick</p> <p>2 about current issues.</p> <p>3 If this came out in The Times, that</p> <p>4 would certainly qualify as a current issue.</p> <p>5 Q. So what would you -- just what is roll</p> <p>6 call?</p> <p>7 A. Before every tour when the officers get</p> <p>8 their assignment, they stand muster and they're</p> <p>9 inspected and given their assignment. That's roll</p> <p>10 call.</p> <p>11 Q. Who would spoke at roll call?</p> <p>12 A. It could be a variety: the sergeant --</p> <p>13 the patrol sergeant always spoke. He conducted</p> <p>14 roll call and inspection. The tour commander may</p> <p>15 or may not speak. I may or may not speak.</p> <p>16 Q. So you said it's likely -- or correct</p> <p>17 me if I'm wrong. Is it likely that you would have</p> <p>18 spoken at roll call about this article following</p> <p>19 its publication?</p> <p>20 A. I may have, yeah.</p> <p>21 Q. Do you remember speaking about it?</p> <p>22 A. No.</p> <p>23 Q. What would you have said at roll call?</p> <p>24 MR. BROPHY: Objection.</p> <p>25 You can answer.</p>	<p style="text-align: right;">Page 109</p> <p>1 Fitzpatrick</p> <p>2 out talking to any officers who had made the</p> <p>3 arrests for public lewdness during this time</p> <p>4 frame?</p> <p>5 A. I do, actually.</p> <p>6 Q. Who do you remember talking to?</p> <p>7 A. I couldn't tell you who it was, but I</p> <p>8 do remember the genuine sentiment -- general</p> <p>9 sentiment around the command. When this came out,</p> <p>10 the morale went right into the toilet, which is</p> <p>11 something I was afraid was going to happen when I</p> <p>12 saw this.</p> <p>13 Nobody really wanted to go out, and</p> <p>14 they would say, The Port Authority is not going to</p> <p>15 back us if something goes wrong or even if</p> <p>16 somebody says something goes wrong, so we have to</p> <p>17 shut it down, Cap, no hard feelings.</p> <p>18 I think that's what Kehoe was talking</p> <p>19 about. That's why he didn't want Officer</p> <p>20 Opromalla taking the chance of getting another</p> <p>21 complaint.</p> <p>22 The advice I gave is make arrests. If</p> <p>23 you see probably cause for arrest, no matter what</p> <p>24 it is, make the arrest. You're in the right.</p> <p>25 Keep doing your job. If you stop doing your job,</p>

<p style="text-align: right;">Page 118</p> <p>1 Fitzpatrick</p> <p>2 further after you read this?</p> <p>3 A. No.</p> <p>4 Q. Does The Port Authority Police</p> <p>5 Department conduct sweeps for the crime of public</p> <p>6 lewdness at The Port Authority Bus Terminal?</p> <p>7 MR. BROPHY: Note my objection.</p> <p>8 You can answer.</p> <p>9 A. No, I would adamantly say that is not</p> <p>10 the case.</p> <p>11 Q. What are sweeps?</p> <p>12 A. We had spoken about this earlier. A</p> <p>13 sweep by the conditions team -- no, no -- yeah,</p> <p>14 yeah.</p> <p>15 When I use the term "sweep," obviously</p> <p>16 not with a broom but figuratively you're going to</p> <p>17 go out and cover the entirety of the bus terminal.</p> <p>18 A lot of times they don't go through the entire</p> <p>19 bus terminal because they already found -- you</p> <p>20 have five police officers and you've two guys</p> <p>21 lighting crack pipes out on 42nd Street and</p> <p>22 another one smoking K2 on the corner, and, there</p> <p>23 you go, the cops are gone. If I have enough</p> <p>24 personnel, maybe I will assign five more.</p> <p>25 But the idea is to sweep the entirety</p>	<p style="text-align: right;">Page 120</p> <p>1 Fitzpatrick</p> <p>2 You can't sit there and watch for one</p> <p>3 crime to occur while another one happens. That</p> <p>4 doesn't make any sense. The idea have to make</p> <p>5 arrests to bring down the stats of the bus</p> <p>6 terminal.</p> <p>7 Q. If a police officer entered a men's</p> <p>8 room, either a plainclothes officer or uniformed</p> <p>9 officer, and didn't see any crimes occurring, what</p> <p>10 should that officer do?</p> <p>11 MR. BROPHY: Objection.</p> <p>12 You can answer.</p> <p>13 A. You know, I don't quite know how to</p> <p>14 answer the question.</p> <p>15 Q. Should the officer wait in the restroom</p> <p>16 for a crime to occur?</p> <p>17 MR. BROPHY: Objection.</p> <p>18 You can answer.</p> <p>19 A. He/she may, you know, if -- the best</p> <p>20 way I could answer, I guess, is to say if outside</p> <p>21 the doors they call Post 9, 42nd Street doors, is</p> <p>22 a very busy area. If the plainclothes go out</p> <p>23 there and they don't see anything, you know,</p> <p>24 immediately, yeah, I would like them to secret</p> <p>25 themselves and wait for a drug deal or wait for</p>
<p style="text-align: right;">Page 119</p> <p>1 Fitzpatrick</p> <p>2 of the bus terminal, bathrooms, lower levels,</p> <p>3 everywhere where the public has access, and you</p> <p>4 combat every criminal activity that you observe.</p> <p>5 Q. So in all of the time that you were</p> <p>6 with The Port Authority Police Department, you</p> <p>7 don't recall there being any sweeps for the crime</p> <p>8 of public lewdness or exposure?</p> <p>9 A. I don't ever remember targeting public</p> <p>10 lewd. If you're asking do we know that it happens</p> <p>11 in the bathroom? Of course it does. They're not</p> <p>12 going to do it on the main concourse. If you go</p> <p>13 into the bathroom, you know you're going to -- you</p> <p>14 may very well see that crime, you may very well</p> <p>15 see two guys hyping up, you may very well see</p> <p>16 other crimes.</p> <p>17 Q. Do you remember any roll call</p> <p>18 instructing officers to patrol for public lewdness</p> <p>19 or exposure in the bathrooms?</p> <p>20 A. I may well have said patrol the</p> <p>21 bathrooms but for any crime. It wouldn't be for</p> <p>22 just -- they're not going to go in there -- as a</p> <p>23 matter of fact, I know that was an instruction:</p> <p>24 You're going to make an arrest for any crime</p> <p>25 observed.</p>	<p style="text-align: right;">Page 121</p> <p>1 Fitzpatrick</p> <p>2 whatever may come across.</p> <p>3 Q. Did you ever instruct officers that</p> <p>4 they should wait in men's rooms to see if a crime</p> <p>5 would occur?</p> <p>6 A. No, no different from anywhere else. I</p> <p>7 think it would be a little more difficult to wait</p> <p>8 inside a men's room.</p> <p>9 Q. Why would it be more difficult?</p> <p>10 A. Well, it's inherently a smaller area.</p> <p>11 Q. Would you think that there are any</p> <p>12 privacy concerns to urinal -- to officers waiting</p> <p>13 inside men's rooms?</p> <p>14 A. Privacy issues?</p> <p>15 MR. BROPHY: Objection.</p> <p>16 You can answer.</p> <p>17 A. Just by their mere presence in the</p> <p>18 bathroom? I wouldn't -- I don't know about</p> <p>19 privacy issues, but I would say I'm not getting</p> <p>20 the bang for my buck policing-wise if I have guys</p> <p>21 waiting in the bathroom.</p> <p>22 Q. So I'm not sure. Before you said you</p> <p>23 thought it would be good practice for them to wait</p> <p>24 in the bathroom to see if something happened. Now</p> <p>25 you're saying --</p>